

TOP SECRET

Federal Communications Commission

DA 99-1971

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Bell Atlantic-Delaware, et al.,	)	
	)	
Complainants,	)	
	)	File No. E-98-48
v.	)	
	)	
Frontier Communications Services, Inc.,	)	
et al.,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
	)	
Bell Atlantic-Delaware, et al.,	)	File No. E-98-49
	)	
Complainants,	)	
	)	
v.	)	
	)	
MCI Telecommunications Corporation,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 23, 1999;

Released: September 24, 1999

By the Chief, Common Carrier Bureau:

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## I. INTRODUCTION

1. In this order, we resolve two formal complaints filed by Bell Atlantic-Delaware, *et al.* (Bell Atlantic or Complainant),<sup>1</sup> one against Frontier Communications Services, Inc., *et al.* (Frontier)<sup>2</sup> and one against MCI Telecommunications Corporation (MCI)<sup>3</sup> (collectively Defendants),<sup>4</sup> pursuant to section 208 of the Communications Act of 1934, as amended (Act).<sup>5</sup> Bell Atlantic contends that Defendants violated section 276 of the Act and section 64.1300 of the Commission's rules by refusing to pay payphone compensation for compensable calls that originated on Bell Atlantic payphones. Under section 276 of the Act, and the Commission's implementing rules and orders, interexchange carriers (IXCs) are required to compensate payphone service providers, including local exchange carrier (LEC) payphone service providers, for certain completed intrastate and interstate calls originated from the payphone service providers' payphones.<sup>6</sup> Bell Atlantic seeks an order requiring

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<sup>1</sup> Bell Atlantic-Delaware, Inc., Bell Atlantic-Maryland, Inc., Bell Atlantic-New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., Bell Atlantic-Virginia, Inc., Bell Atlantic-Washington, D.C., Inc., Bell Atlantic-West Virginia, Inc., New York Telephone Company and New England Telephone and Telegraph Company (collectively Bell Atlantic).

<sup>2</sup> Frontier Communications Services Inc., Frontier Communications International Inc., Frontier Communications of the West Inc., Frontier Communications-North Central Region Inc., Frontier Communications of New England Inc., and Frontier Communications of the Mid Atlantic Inc. (collectively Frontier).

<sup>3</sup> Subsequent to the filing of this complaint, Defendant MCI merged with WorldCom. This order is binding on all named parties and their successors-in-interest.

<sup>4</sup> *Bell Atlantic v. Frontier*, File No. E-98-48 (filed July 15, 1998) (Complaint (Frontier)). *Bell Atlantic v. MCI*, File No. E-98-49 (filed July 15, 1998) (Complaint (MCI)). The allegations and legal analysis are virtually identical in the two Bell Atlantic complaints. Bell Atlantic initially filed its complaint against Frontier Corporation, which is a holding company that owns common carriers subject to the Commission's rules. The parties agreed that Bell Atlantic could amend its complaint to substitute the Frontier Long Distance Companies for Frontier Corporation as the defendants. See Bell Atlantic/Frontier Joint Statement at 2. Accordingly, Bell Atlantic filed a revised complaint substituting the Frontier Long Distance Companies as the defendants on September 4, 1998.

<sup>5</sup> 47 U.S.C. § 208. Section 208 gives a party the right to file a complaint with the Commission if it believes that a common carrier acted or failed to act in contravention of the Act or a Commission rule or order.

<sup>6</sup> See 47 U.S.C. § 276; 47 C.F.R. § 64.1300; see also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order*, 11 FCC Rcd 20,541 (1997) (*Report and Order*); *Order on Reconsideration*, 11 FCC Rcd 21,233 (1997) (*Order on Reconsideration*) (collectively the *Payphone Orders*). The *Payphone Orders* were affirmed in part and vacated in part. See *Illinois Public Telecomm. v. FCC*, 117 F.3d 555 (D.C. Cir. 1997). The Commission addressed the issues remanded by *Illinois Public Telecomm.* in the *Second Report and Order*, 13 FCC Rcd 1778 (1997) (*Second Report and Order*). The *Second Report and Order* was also appealed. On appeal, the Court remanded

Defendants to pay payphone compensation to Bell Atlantic for all calls originated on its payphones and carried by Defendants, during the fourth quarter of 1997 and the first quarter of 1998. Bell Atlantic also seeks an order directing Defendants to make future payments for such calls.

2. Defendants each filed an answer arguing that Bell Atlantic is not entitled to payphone compensation for the calls at issue because Bell Atlantic did not adequately certify that it had complied with the compensation eligibility prerequisites set forth in the *Payphone Orders*.<sup>7</sup> In Defendants' view, certification requires that Bell Atlantic prove to Defendants' satisfaction that Bell Atlantic has met all of the compensation eligibility prerequisites, including the removal of intrastate subsidies from Bell Atlantic's rates.<sup>8</sup>

3. We find Defendants' arguments without merit. The term certification, as set forth in the *Order on Reconsideration*, does not mandate that a LEC payphone service provider prove to the IXC payor that it has satisfied each compensation eligibility prerequisite. Under the Commission's rules and orders, for purposes of triggering the IXCs' payment obligation, a LEC payphone service provider sufficiently "certifies" its compliance with the prerequisites by attesting authoritatively to an IXC payor that such LEC payphone service provider has satisfied each prerequisite to the receipt of payphone compensation. Moreover, we find this approach to be consistent with the ordinary meaning of the term "to certify." We therefore conclude that Bell Atlantic adequately certified to Defendants that it satisfied the compensation eligibility prerequisites. Accordingly, we order Defendants to pay payphone compensation to Bell Atlantic for all compensable calls routed to them that originated from Bell Atlantic payphones during the fourth quarter of 1997, the first quarter of 1998, and all subsequent calls, as required by the Act and the Commission's rules.

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certain issues to the Commission. See *MCI Telecomm. Corp. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998). The Commission addressed those issues in the *Third Report and Order*, 14 FCC Rcd 2545 (1999). The portions of the *Payphone Orders* addressed in this order were neither vacated nor remanded by the Court.

<sup>7</sup> See *Order on Reconsideration*, 11 FCC Rcd 21,233 (1997).

<sup>8</sup> See Frontier Answer at para. 40; MCI Answer at para. 12.

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## II. BACKGROUND

### A. Statutory Authority

4. In the *Payphone Orders*,<sup>9</sup> the Commission adopted new rules and policies governing the payphone industry to implement section 276 of the Act. Those rules and policies: (1) establish a plan to ensure fair compensation for "each and every completed intrastate and interstate call using [a] payphone[.]" (2) establish a plan to discontinue intrastate and interstate carrier access charge service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange services; (3) prescribe nonstructural safeguards for Bell Operating Company (BOC) payphones; (4) permit the BOCs to negotiate with location providers regarding the interLATA carrier presubscribed to their payphones; (5) permit all [payphone service providers] to negotiate with location providers about the intraLATA carriers that are presubscribed to their payphones; and (6) adopt guidelines for use by the states in establishing public interest payphones to be located "where there would otherwise not be a payphone[.]"<sup>10</sup>

5. In the *Payphone Orders*, consistent with section 276 of the Act, the Commission concluded that all payphone service providers, including LEC payphone service providers, must be compensated for "each and every completed intrastate and interstate call" originated from their payphones.<sup>11</sup> Prior to the *Payphone Orders*, payphone service providers received no revenue for originating certain calls (e.g., subscriber 800 and other toll-free number calls) and were prohibited from blocking callers from making some of those calls

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<sup>9</sup> *Report and Order*, 11 FCC Rcd 20,541; *Order on Reconsideration*, 11 FCC Rcd at 21,233. There have been many orders in CC Docket No. 96-128, including the *Payphone Orders*, which address a variety of payphone-related issues. We will refer to this docket as the payphone proceeding.

<sup>10</sup> 47 U.S.C. § 276(b). Section 276(b)(1)(B) directed the Commission to discontinue the above-mentioned carrier access charge service elements and payments in effect on such date of enactment and intrastate and interstate payphone subsidies in favor of a compensation plan that would ensure fair compensation for each and every completed call as set forth in section 276(b)(1)(A). Only certain types of payphone owners were entitled to subsidies.

<sup>11</sup> 47 U.S.C. § 276(b)(1)(A) (directing the Commission to establish a plan "to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone"); 47 C.F.R. § 64.1300(a) (requiring "every carrier to whom a completed call from a payphone is routed [to] compensate the payphone service provider for the call . . ."). See also *Report and Order*, 11 FCC Rcd at 20,566, para. 48.

(e.g., access code calls).<sup>12</sup> The Commission concluded in the *Payphone Orders* that payphone service providers must be compensated for access code, subscriber 800, and other toll-free number calls, whether they are jurisdictionally intrastate or interstate.<sup>13</sup> The Commission further concluded that IXCs, the primary economic beneficiary of such calls, would be responsible for compensating the payphone service providers.<sup>14</sup>

6. The Commission concluded that LEC payphone service providers would be eligible to receive compensation for completed calls originated from their payphones once they had satisfied certain requirements. Specifically, to receive compensation, the Commission required that each LEC "must be able to certify" that it had complied with those prerequisites.<sup>15</sup> In the *Payphone Orders*, the Commission did not set forth any requirements for the form of such a certification. The Commission subsequently stated in the *Second Report and Order*, however, that LEC payphone service providers are not required to file such a certification with any state or federal regulatory agency or to obtain a formal certification of compliance from either the Commission or the states to be eligible to receive

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<sup>12</sup> See Telephone Operator Consumer Services Improvement Act (TOCSIA), Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226) (prohibiting payphone service providers from blocking certain calls); see also *Report and Order*, 11 FCC Rcd at 20,568, para. 52. An "access code call" is a call made using a sequence of numbers that, when dialed, connect the caller to the operator service provider (OSP) associated with that sequence, rather than the OSP presubscribed to the originating line. Access code calls include toll-free calls (e.g., 1-800-CALL-ATT), 101XXXX calls in equal access areas, and "950" Feature Group B dialing (950-XXXX or 950-1XXXX) anywhere, where the three-digit XXX denotes a particular interexchange carrier. See *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 7 FCC Rcd 3251, 3251 n.1 (1992). "Subscriber 800 calls" consist of calls to an 800 number assigned to a particular subscriber. See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996). In this order, the term subscriber 800 call encompasses toll-free subscriber calls, including 888 and 877 numbers. See *Toll Free Service Access Codes*, 11 FCC Rcd 2496 (1996); see also *Third Report and Order*, 14 FCC Rcd at 2568 n.88.

<sup>13</sup> See *Report and Order*, 11 FCC Rcd at 20,568, para. 52.

<sup>14</sup> For purposes of paying compensation for compensable calls and other associated obligations, such as tracking calls, the term "IXC" includes a LEC when it provides interstate, intraLATA toll service. See *Report and Order*, 11 FCC Rcd at 20,584, para. 83 n.293; *Order on Reconsideration*, 11 FCC Rcd at 21,270, paras. 74-75 & 21,278, para. 92. Under the *Third Report and Order*, the default per-call compensation amount is \$0.24 absent negotiation to receive a different amount. See *Third Report and Order*, 14 FCC Rcd at 2552, paras. 14, 196 (setting forth the history of Commission payphone compensation plans and establishing the compensation amount retroactive to October 7, 1997).

<sup>15</sup> See *Order on Reconsideration*, 11 FCC Rcd at 21,293-94, paras. 131-32; see *infra* para. 12 (listing specific requirements).

per-call compensation pursuant to the *Payphone Orders*.<sup>16</sup> Addressing certification in the *Bureau Intrastate Tariffing Waiver Order*, the Common Carrier Bureau (Bureau) stated that, although the Commission does not require a LEC payphone service provider to file a certification with it, nothing in the *Payphone Orders* prohibits an IXC payor from requesting such a certification from the LECs.<sup>17</sup> In the *Bureau Coding Digit Waiver Order*, the Bureau further stated that "LECs that have certified to the IXC that they comply with the requirements of the *Payphone Orders* must receive per-call compensation."<sup>18</sup>

#### B. The Bell Atlantic Complaints.

7. Bell Atlantic provides local exchange and payphone services in the northeast and mid-Atlantic states.<sup>19</sup> Defendants Frontier and MCI are IXCs that provide both interstate and intrastate telephone toll service.<sup>20</sup> Since October 7, 1997, the beginning of per-call compensation, Bell Atlantic has delivered calls from its payphones to Defendants.<sup>21</sup>

8. To obtain compensation for calls that originated from its payphones, beginning in June 1997, Complainant Bell Atlantic—including then-NYNEX<sup>22</sup>—sent letters to Frontier and MCI stating that the letters "certified" that each of its companies had satisfied the

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<sup>16</sup> See *Second Report and Order*, 13 FCC Rcd at 1780, para. 1 n.9; see also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, 13 FCC Rcd 4998, 5001-02, para. 4 (1998) (*Bureau Coding Digit Waiver Order*) (emphasizing that there are no state or federal certification requirements).

<sup>17</sup> See *Bureau Intrastate Tariffing Waiver Order*, 12 FCC Rcd at 21,380, para. 22.

<sup>18</sup> *Bureau Coding Digit Waiver Order*, 13 FCC Rcd at 5001-02, para. 4 (emphasis added); see also *infra* para. 30 (discussing the rights of a payor to challenge a certification).

<sup>19</sup> See Complaint (Frontier) at para. 2; Complaint (MCI) at para. 2.

<sup>20</sup> See Bell Atlantic/Frontier Joint Statement at 2; MCI Answer at para. 3.

<sup>21</sup> See Bell Atlantic/Frontier Joint Statement at 2; Complaint (MCI) at para. 6.

<sup>22</sup> Bell Atlantic and NYNEX merged prior to filing the instant complaints. We note, however, that in June 1997—when Bell Atlantic initially sought compensation from the IXCs—Bell Atlantic and NYNEX had not yet merged. Therefore, each company initially attempted to obtain compensation independently of the other. For the purpose of this complaint, references to the Complainant Bell Atlantic refer to the merged entity, which includes former NYNEX territory, unless otherwise noted.

compensation eligibility prerequisites, as set forth in the *Payphone Orders*.<sup>23</sup> Therefore, Complainant stated, each of its companies was entitled to receive payphone compensation as set forth in the Commission's rules and orders. To supplement its letters, NYNEX provided several compliance matrices listing how it satisfied certain prerequisites including: intrastate subsidy removal; intrastate tariff filings for payphone services; unbundled functions and features; and state-specific tariff information.<sup>24</sup> Similarly, Bell Atlantic provided information in its letters indicating how it satisfied each prerequisite; for example, in responding to each requirement, Bell Atlantic noted the effective date of the tariff, approved date for the tariff or order, and tariff number, where applicable.<sup>25</sup>

9. Defendants Frontier and MCI responded similarly to Complainant's June 1997 letters,<sup>26</sup> each stating that it would not pay compensation until Bell Atlantic proved that the compensation eligibility prerequisites had been satisfied. Specifically, Frontier refused to pay compensation for any calls originated in Bell Atlantic's territory (including former NYNEX territory) until it was provided with specific materials that it contended would demonstrate

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<sup>23</sup> See Complaint (Frontier) at paras. 12-13 & Exhibit A. Exhibit A to the complaint against Frontier is the following: Letter to FCNC-Frontier Comm. No. O.R., "NYNEX Certification of Compliance with Requirements for Payphone Compensation in Payphone Reclassification Proceeding, CC Docket 96-128," from Diane F. Giacalone, VP-General Manager, NYNEX Public Communications & Peter Shepherd, Director, NYNEX Regulatory Planning (June 27, 1997) [hereinafter Complaint (Frontier) at Exhibit A]. See also Complaint (MCI) at paras. 12-13 & Exhibit A. Exhibit A to the complaint against MCI is an identical letter to that in Exhibit A in the complaint against Frontier, with the recipient being Denny Reuss, Cincinnati-- for MCI. Since the substance of the letters is identical, we will refer to these two letters as "Exhibit A" unless it is necessary to distinguish between the recipients of the letter.

<sup>24</sup> See *id.* at Attachment A at 3-14. NYNEX also provided compliance matrices for state and federal filing requirements, a billing and collection outline, and a sample invoice. The matrices included information such as the date NYNEX filed a tariff to satisfy a particular requirement, effective date of tariff, and tariff transmittal number, or Commission order approving certain action.

<sup>25</sup> See Complaint (Frontier) at Exhibit B. Exhibit B to the complaint against Frontier is the following: Letter to Michael Nighan, Manager-Regulatory, Allnet/Frontier from Paul V. Francischetti, Vice President - Legislative Planning & Re-Engineering, Bell Atlantic (June 30, 1997) [hereinafter Complaint (Frontier) at Exhibit B]; see also Complaint (MCI) at Exhibit B. Exhibit B to the complaint against MCI is identical to that in the complaint against Frontier with the recipient being Laura Pickeral, MCI. We will refer to these two letters as Exhibit B since they are identical, unless it is necessary to distinguish between the recipients. Bell Atlantic certified that each of its following companies complied with the Commission's requirements: Bell Atlantic-Delaware, Inc., Bell Atlantic-Maryland, Inc., Bell Atlantic-New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., Bell Atlantic-Virginia, Inc., Bell Atlantic-Washington, D.C., Inc., and Bell Atlantic-West Virginia, Inc.

<sup>26</sup> Unless otherwise specified, the entity "Bell Atlantic" includes former NYNEX territory. Thus, Defendants responses to "Bell Atlantic" encompass those responses to NYNEX.

Bell Atlantic's compliance with the Commission's payphone compensation prerequisites.<sup>27</sup> Similarly, MCI stated that it was not required to pay per-call compensation to Bell Atlantic, because Bell Atlantic had not provided evidence to substantiate the claim that payphone subsidies had been removed from all of Bell Atlantic's intrastate rates.<sup>28</sup> MCI, however, paid compensation in some Bell Atlantic states.<sup>29</sup> Subsequent to the filing of this complaint, Frontier also paid compensation in some Bell Atlantic states.<sup>30</sup>

10. Bell Atlantic issued two subsequent letters in November/December 1997 and again in March 1998 each to Frontier<sup>31</sup> and MCI,<sup>32</sup> again seeking compensation for calls originated from Bell Atlantic's payphones (including those in the former NYNEX territory), and reiterating that it had satisfied all of the Commission's compensation eligibility

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<sup>27</sup> See Frontier Answer at Exhibit A (stating that Frontier would pay only those LECs that followed the procedures that Frontier itself outlined); see also Complaint (Frontier) at Exhibit C (Letter to Paul V. Francischetti, Vice President - Bell Atlantic Network Services, Inc. from Michael J. Nighan, Director - Regulatory Affairs, Frontier (July 10, 1997)); Complaint (Frontier) at Exhibit D (Letter to Diane F. Giacalone, Vice President, NYNEX from Michael J. Nighan, Director - Regulatory Affairs, Frontier (July 11, 1997)).

<sup>28</sup> See MCI Answer at para. 12; see also Complaint (MCI) at Exhibit C. The removal of payphone subsidies is one of the prerequisites to eligibility to obtain payphone compensation. See *infra* para. 15.

<sup>29</sup> Bell Atlantic seeks compensation from MCI for the fourth quarter 1997 for the following states: Delaware, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia, Maine, Massachusetts and Rhode Island, and for the District of Columbia. Bell Atlantic seeks compensation from MCI for the first quarter 1998 for the following states: Maryland, New Jersey, Pennsylvania, Virginia, Maine, Massachusetts, Rhode Island, and for all states on a going forward basis. See Complaint (MCI) at paras. 16-17.

<sup>30</sup> See Letter to Magalie Roman Salas, Secretary, FCC from Steven A. Augustino, Counsel to Frontier (Nov. 4, 1998) (noting that subsequent to the filing of this complaint, Frontier agreed to pay compensation to Bell Atlantic for payphones in the following jurisdictions: Massachusetts, New Hampshire, New York, Pennsylvania, Vermont, and West Virginia.) At the time of the filing of the complaint, Frontier had not made any payphone compensation payments to Bell Atlantic for the fourth quarter 1997 or the first quarter 1998.

<sup>31</sup> See Complaint (Frontier) at Exhibits E-F. Exhibit E to the Complaint against Frontier is the following: Letter to Michael J. Nighan, Director - Regulatory Affairs, Frontier Communications from Diane Giacalone, Vice President, Marketing and Planning (Dec. 10, 1997) [hereinafter Complaint (Frontier) at Exhibit E]. Exhibit F to the Complaint against Frontier is the following: Letter from Paul V. Francischetti, Vice President - Marketing and Planning, Bell Atlantic (Mar. 13, 1998) [hereinafter Complaint (Frontier) at Exhibit F].

<sup>32</sup> See Complaint (MCI) at Exhibits D-E. Exhibit D to the Complaint against MCI is the following: Letter to Laura Pickeral, MCI Communications from Diane Giacalone, Vice President, Marketing and Planning, Bell Atlantic (Nov. 12, 1997) [hereinafter Complaint (MCI) at Exhibit D]. Exhibit E to the Complaint against MCI is the following: Letter from Paul V. Francischetti, Vice President - Marketing and Planning, Bell Atlantic (Mar. 13, 1998) [hereinafter Complaint (MCI) at Exhibit E]. We note that Exhibit E to the complaint against MCI is identical to Exhibit F to the complaint against Frontier.



prerequisites.<sup>33</sup> Additionally, in June 1998, representatives from Bell Atlantic met with representatives from MCI and Frontier (on separate occasions), along with certain Commission staff members, to discuss Defendants' obligations to pay payphone compensation.<sup>34</sup> During these meetings, Commission staff expressed the position that the *Payphone Orders* clearly mandated that IXCs must compensate a LEC payphone service provider upon receipt of the LEC's certification of eligibility without further inquiry or requirements. Nonetheless, each Defendant stated that it would not compensate Bell Atlantic until Bell Atlantic *had proven* to each Defendant's satisfaction that it had removed intrastate subsidies from its rates.<sup>35</sup>

11. In July 1998, Bell Atlantic initiated the present action alleging that Defendants' refusal to pay payphone compensation violated section 276 of the Act and the Commission's implementing rules and orders. To facilitate resolution of the issues addressed in the complaint, the Enforcement Division of the Common Carrier Bureau (Division) held a status conference for all parties on August 25, 1998. At that conference, the Division directed the parties to brief two specific issues: (1) what constitutes a "certification" as required by the Commission's *Payphone Orders*, and has Bell Atlantic complied with this certification requirement; and (2) are there any circumstances under which an interexchange carrier may refuse to pay payphone compensation after receiving a certification from a payphone service provider.<sup>36</sup>

### III. DISCUSSION

#### A. Introduction.

12. In the *Payphone Orders*, the Commission set forth prerequisites that LEC

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<sup>33</sup> See Complaint (Frontier) at Exhibit E; Complaint (MCI) at Exhibit D (stating that "Bell Atlantic has satisfied all the FCC's requirements for deregulating payphones").

<sup>34</sup> Frontier Answer at para. 22 (stating that Frontier attended the meeting and indicated at that time that Bell Atlantic "had not proven that it is entitled to payphone compensation"). See also Complaint (MCI) at para. 20.

<sup>35</sup> See Frontier Answer at para. 22. See also Complaint (MCI) at Attachment I (Letter to Michael Kellogg, Counsel for RBOC Coalition from Leonard S. Sawicki, MCI (June 24, 1998)) (stating that MCI is not compensating certain companies, including Bell Atlantic, because they "have not met the requirement that LECs remove intrastate payphone subsidies from intrastate access rates and certify this to the interexchange carriers.").

<sup>36</sup> See Letter to Jennifer Myers, Federal Communications Commission from Parties (Aug. 26, 1998).

payphone service providers must satisfy to be eligible to receive payphone compensation.<sup>37</sup> In doing so, the Commission delineated explicit guidelines that LECs must follow to satisfy each prerequisite, including, in some cases, filing tariffs satisfying the prerequisite.<sup>38</sup> In the *Order on Reconsideration*, the Commission stated that once these prerequisites had been met, "[t]o receive compensation, a LEC must be able to certify the following"

- (1) it has an effective cost accounting manual (CAM) filing; (2) it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge (SLC) revenue; (3) it has effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate [payphone] subsidies; (4) it has deregulated and reclassified or transferred the value of payphone customer premises equipment (CPE) and related costs as required in the *Report and Order*; (5) it has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones); and (6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines.<sup>39</sup>

The Commission also required these LECs that are BOCs to "have approved [comparably efficient interconnection (CEI)] plans for basic payphone services and unbundled functionalities prior to receiving compensation."<sup>40</sup>

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<sup>37</sup> See *Report and Order*, 11 FCC Rcd at 20,604-34, paras. 127-87 (establishing eligibility requirements to receive per-call compensation); see also *Order on Reconsideration*, 11 FCC Rcd at 21,299-21,329, paras. 142-220 (further discussing such requirements). These orders listed the steps LECs must take to satisfy the prerequisites including what tariffs, if any, were required to be filed with either the states or the Commission.

<sup>38</sup> See *Report and Order*, 11 FCC Rcd at 20,604-34, paras. 127-87 (establishing eligibility requirements to receive per-call compensation); see also *Order on Reconsideration*, 11 FCC Rcd at 21,299-21,329, paras. 142-220 (further discussing such requirements).

<sup>39</sup> *Order on Reconsideration*, 11 FCC Rcd at 21,293, para. 131. See also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order, 12 FCC Rcd 21,370, 21,374, para. 10 (Com. Car. Bur. Apr. 15, 1997) (*Bureau Intrastate Tariffing Waiver Order*) (stating that the requirements for intrastate tariffs are as follows:

- (1) that payphone service intrastate tariffs be cost-based, consistent with Section 276, nondiscriminatory and consistent with *Computer III* tariffing guidelines; and (2) that the states ensure that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates) (citations omitted).

<sup>40</sup> *Order on Reconsideration*, 11 FCC Rcd at 21,294, para. 132. The Commission also required payphone service providers to transmit payphone-specific coding digits to IXCs before payphone service providers would be eligible to receive compensation. Due to difficulties implementing coding digits, the Bureau granted limited waivers of the payphone service providers' obligation to provide coding digits, but reiterated that these waivers

13. Bell Atlantic contends that it is entitled to receive payphone compensation from Defendants because it "certified" to each defendant that it complied with the Commission's compensation eligibility prerequisites.<sup>41</sup> All parties agree that, in these letters, Bell Atlantic does not attempt to demonstrate to the IXC payor that it complied with each prerequisite.<sup>42</sup> Instead, the letters purport to confirm to the IXC that Bell Atlantic has complied with the compensation eligibility prerequisites set forth by the Commission in the *Payphone Orders*.<sup>43</sup> Defendants argue that Bell Atlantic's statements that it "certifies" that it has complied with the Commission's prerequisites do not constitute a "certification" as required by the Commission's orders. Instead, Defendants contend that Bell Atlantic must demonstrate to the IXCs that it actually has met the Commission's compensation eligibility prerequisites to constitute a valid certification.<sup>44</sup> Defendants thus contend that Bell Atlantic is not entitled to payphone compensation, because it has not provided the IXCs proof positive that it satisfied the compensation eligibility prerequisites, including the requirement that the LEC remove intrastate payphone subsidies from its intrastate rates.<sup>45</sup>

14. To resolve the complaints before us, we must determine whether Bell Atlantic's letters to Defendants, which state that the LEC has complied with each compensation eligibility prerequisite, constitute a valid certification triggering a payment obligation by Defendants. Specifically, we must determine whether the term "certification," as set forth in the *Order on Reconsideration*, requires a LEC to demonstrate to the IXC payor that the LEC has complied with each payphone compensation prerequisite. The Commission has not specifically defined the term "certification" in the context of payphone compensation. The

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did not negate an IXC's obligation to pay payphone compensation. *Bureau Coding Digit Waiver Order*, 13 FCC Rcd at 4998. The provision of coding digits is not part of the Commission's certification "requirement" and is not at issue in this order.

<sup>41</sup> See Bell Atlantic Reply Brief at 1.

<sup>42</sup> See Bell Atlantic/Frontier Joint Statement at 2; MCI Answer at para. 12.

<sup>43</sup> See, e.g., Complaint at Exhibit B (stating, "[e]nclosed are certifications confirming that each of the Bell Atlantic local exchange companies has met all requirements established by the [Commission] for eligibility to receive payphone compensation.").

<sup>44</sup> See Frontier Answer at para. 40; MCI Answer at para. 7.

<sup>45</sup> See Bell Atlantic/Frontier Joint Statement at 2 (stating that one of the disputed facts is that "Bell Atlantic has failed to demonstrate that it removed payphone subsidies from its intrastate rates for telephone exchange or exchange access service"); see also MCI Answer at paras. 8, 12. Although Defendants contend that Bell Atlantic must demonstrate that it has satisfied each prerequisite to payphone compensation, Defendants' main challenge to Bell Atlantic's certification letters is Bell Atlantic's failure to prove one particular prerequisite - the removal of intrastate subsidies.

courts repeatedly have recognized the authority of agencies to interpret the agency's own rules.<sup>46</sup> For the reasons discussed below, we find that the term "certification" as set forth in the *Order on Reconsideration* does not require a LEC to demonstrate to the satisfaction of the IXC payor that such LEC has satisfied each compensation eligibility prerequisite. Rather, we find that the term "certification" as set forth in the *Order on Reconsideration* requires that a LEC be able to attest authoritatively that such LEC indeed has complied with each prerequisite. Therefore, we conclude that Bell Atlantic's letters to Defendants, which attested that Bell Atlantic had complied with each prerequisite, constitute a valid certification such that Defendants were obligated to pay Bell Atlantic payphone compensation.

**B. A valid certification as set forth in the *Order on Reconsideration* requires an attestation of compliance not a demonstration of compliance.**

15. In the *Order on Reconsideration*, the Commission stated that to be eligible to receive payphone compensation, a LEC "must be able to certify" that it had satisfied the prerequisites set forth in the *Payphone Orders*.<sup>47</sup> In requiring that a LEC "must be able to certify," the Commission declined to require LECs to provide a certification to a state or federal regulatory agency, or any other entity. Instead, the Commission simply required that the LEC *be able to certify* its compliance.<sup>48</sup> The Commission also specifically declined to require LECs to obtain a formal certification from either a state or federal regulatory agency to be eligible for compensation.<sup>49</sup> The *Bureau Intrastate Tariffing Waiver Order*, however,

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<sup>46</sup> See *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965); see also *National Association of Regulatory Utility Commissioners v. FCC*, 746 F.2d 1492, 1502 (D.C. Cir. 1984) (stating that the Commission's interpretation of its own policies and regulations is entitled to "great deference" and that "the administrative interpretation is of controlling weight unless it is plainly erroneous or inconsistent with the regulation.") (citations omitted).

<sup>47</sup> *Order on Reconsideration*, 11 FCC Rcd at 21,293-94, para. 131.

<sup>48</sup> As discussed above, the Commission established requirements that LEC payphone service providers must satisfy prior to being eligible to receive per-call compensation. To satisfy some of these requirements, LECs may have to file tariffs or other documents with either a state or federal Commission. The certification requirement, however, is distinct from the individual prerequisites, and does not require a LEC payphone service provider to file any formal certification with a state or federal agency in order to satisfy such a certification. As discussed *infra*, in the *Bureau Intrastate Tariffing Waiver Order*, the Bureau permitted the IXCs to request a certification from the LECs. Thus, we must determine what satisfies the LECs obligation to provide such a certification to the IXCs.

<sup>49</sup> See *Second Report and Order*, 13 FCC Rcd at 1780, para. 1 n.9; see also *Bureau Coding Digit Waiver Order*, 13 FCC Rcd at 5001-02, para. 4 (emphasizing that there are no state or federal certification requirements).

permits an IXC payor to request such a certification from the LECs.<sup>50</sup>

16. We conclude that "certification" as set forth in the *Order on Reconsideration* requires a LEC to attest that it has complied with each compensation eligibility prerequisite.<sup>51</sup> In the *Order on Reconsideration*, the Commission required a LEC to "be able to certify" that it had satisfied the compensation eligibility prerequisites.<sup>52</sup> The Commission did not set forth any specific requirements for such a certification.<sup>53</sup> Therefore, we find it appropriate to examine the use of the ordinary meaning of the term "to certify" to determine a basis for a certification. Black's Law Dictionary defines "certification" as "the formal assertion in writing of some fact . . . ,"<sup>54</sup> and to "certify" as "[t]o authenticate or vouch for a thing in writing."<sup>55</sup> Similarly, Webster's Dictionary defines "certify" as "to attest authoritatively" and "to attest as being true or as represented or as meeting a standard."<sup>56</sup>

17. The Commission also has used this common meaning of the term "to certify" in other contexts where it has not identified specific criteria to constitute "certification." For example, the Commission's definition of "certify" in the context of a formal complaint proceeding requires that "[t]he signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion or other paper, that to the best of his or her

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<sup>50</sup> See *Bureau Intrastate Tariffing Waiver Order*, 12 FCC Rcd at 21,380, para. 22.

<sup>51</sup> As stated above, the *Order on Reconsideration* does not require a LEC to provide any form of a certification to the IXC payor (or to any other entity). Instead, the *Order on Reconsideration* merely requires that a LEC "must be able to certify." The requirement that a LEC "be able to certify" is triggered by an IXC payor's request, as permitted in the *Bureau Intrastate Tariffing Waiver Order*, to see such a certification.

<sup>52</sup> *Order on Reconsideration*, 11 FCC Rcd at 21,293, para. 131.

<sup>53</sup> We conclude that where the Commission seeks particular criteria to constitute certification, it states so explicitly. See Bell Atlantic Reply Brief at 4 (arguing that if the Commission had intended for LECs to prove their eligibility, it would have stated so explicitly). For example, the Commission set forth specific guidelines for the payphone industry regarding the resolution of disputed ANIs. See *Order on Reconsideration*, 11 FCC Rcd at 21,281-82, paras. 102-104. Likewise, with regard to tariff review plans, in the *Material to be Filed in Support of 1998 Annual Access Tariff Filings*, the Commission (as the title indicates) explicitly set forth filing requirements and stated, "[w]e set forth herein the summary material that incumbent [LECs] should file to support the annual revisions to the rates in their intrastate service tariffs." 13 FCC Rcd 6702 (1998). It is thus significant here that the Commission did not establish a similarly specific criteria to satisfy certification in the context of payphone compensation.

<sup>54</sup> BLACK'S LAW DICTIONARY at 227 (6th ed. 1990).

<sup>55</sup> *Id.* at 228.

<sup>56</sup> WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY at 223 (1989).

knowledge, . . . it is well grounded in fact . . . ."<sup>57</sup> Thus, we find that, in this context, the ordinary meaning of the certification signifies an assertion or representation by the certifying party, not, as Defendants assert, a demonstration of proof of the facts being asserted.

18. We also find that there is nothing in the *Payphone Orders* to suggest other than the ordinary meaning of the term "to certify." We find Defendants' arguments supporting a broader meaning of the term "certify" to be unpersuasive. As previously emphasized, the Commission, in the *Order on Reconsideration*, stated only that a LEC must be able to certify that it had satisfied each compensation eligibility prerequisite. The Commission did not institute a separate additional requirement that LECs prove in advance to the Commission, IXC, or any other entity that the prerequisites had been met. Nor did the Bureau in subsequent orders require LECs to prove to IXC payors that it had satisfied each compensation eligibility prerequisite to constitute "certification." In the *Bureau Intrastate Tariffing Waiver Order*, the Bureau specifically refused AT&T's request to clarify that "a LEC is not eligible for payphone compensation 'until it has provided proof of state action verifying the LEC's compliance with section 276 . . . .'"<sup>58</sup> In response, the Bureau reiterated that the Commission's previous orders required only that a LEC "be able to certify" compliance with the payphone compensation prerequisites.<sup>59</sup> The Bureau stated that the IXCs could request a certification from the LECs.<sup>60</sup> Nothing in this Order, however, suggests that the Commission was creating a new requirement that the IXCs could mandate that LECs

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<sup>57</sup> See 47 C.F.R. § 1.734(c). section 1.734(c) states in full:

The original of all pleadings and other submissions filed by any party shall be signed by that party, or by the party's attorney. The signing party shall include in the document his or her address, telephone number, facsimile number and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for the purposes of delay or for any other improper purpose.

<sup>58</sup> *Bureau Intrastate Tariffing Waiver Order*, 12 FCC Rcd at 21,377, para. 16.

<sup>59</sup> *Id.* at 21,380, para. 22.

<sup>60</sup> As stated above, the *Order on Reconsideration* did not require LECs to certify compliance to either a state or federal regulatory agency or to the IXC payors. In the *Bureau Intrastate Tariffing Waiver Order*, the Bureau allowed the IXC to request a certification from the LECs. The Bureau did not expand upon the *Order on Reconsideration's* requirement that the LEC "must be able to certify" nor did it require the LEC to prove compliance to constitute certification.

provide a factual demonstration of compliance to the IXCs' individual standards before that IXC was obligated to pay compensation directed by the statute and by the Commission's rules.

19. Thus, with regard to Defendants' specific allegation that Bell Atlantic must prove that it has removed intrastate payphone subsidies from its rates prior to being eligible to receive payphone compensation, we find that there is no such requirement, and indeed, directly conflicts with prior Commission and Bureau orders. In the *Payphone Orders*, when setting forth the specific guidelines for the removal of intrastate subsidies, the Commission did not institute a "proof" requirement. Instead, the Commission stated that, "pursuant to the mandate in Section 276(b)(1)(B), incumbent LECs must remove from their intrastate rates any charges that recover the cost of payphones."<sup>61</sup> The Commission delegated the removal of intrastate payphone subsidies to the states, noting that "states must determine the intrastate rates elements that must be removed to eliminate any intrastate [payphone] subsidies."<sup>62</sup> The Commission thus required LECs to follow procedures outlined by the state and to be able to certify that they have taken the necessary steps to satisfy the procedures.<sup>63</sup>

20. Indeed, the interpretation Defendants ask us to adopt—that LECs demonstrate compliance to the IXCs' satisfaction to constitute a certification—would place in the hands of the IXC payor the ability to determine when, or even if, it should become obligated to pay compensation mandated by the Act. This interpretation not only would constitute an abdication of the Commission's statutory obligation under section 276 "to ensure that all payphone service providers are fairly compensated for each and every . . . call,"<sup>64</sup> but also would conflict with the authority specifically delegated to the Common Carrier Bureau to determine whether a LEC had complied with each prerequisite. Accordingly, we agree with Bell Atlantic that the term "certification" as used in the *Payphone Orders*, does not, and cannot, require it to prove to each IXC's satisfaction that the LEC has met the Commission's payphone compensation prerequisites.

<sup>61</sup> *Order on Reconsideration*, 11 FCC Rcd at 21,319, para. 193; *see also Report and Order*, 11 FCC Rcd at 20,634, para. 186; 47 U.S.C. § 276(b)(1)(B) (stating in pertinent part that the Commission shall enact regulations that "discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues . . .").

<sup>62</sup> *Report and Order*, 11 FCC Rcd at 20,634, para. 186.

<sup>63</sup> *See id.*; *see also Order on Reconsideration*, 11 FCC Rcd at 21,293, para. 131.

<sup>64</sup> 47 U.S.C. § 276(b)(1)(A).

21. We also find MCI's reliance on *Committee to Elect Lyndon LaRouche v. Federal Election Commission*<sup>65</sup> to be misplaced. In *Committee to Elect LaRouche*, the court reviewed a decision of the Federal Election Commission to withhold from Lyndon LaRouche, a 1976 candidate for the Presidential nomination of the United States Labor Party, certification to receive primary matching funds under the Presidential Primary Matching Payment Account Act. The court found that there is a statutory obligation in the Presidential Primary Matching Payment Account Act that the candidate certify his eligibility to the FEC. The court also noted that, *pursuant to statute*, the FEC must review the submission, determine whether the candidate has satisfied the FEC's eligibility requirements such that the candidate should receive funding, and certify its findings to the Secretary of the Treasury for payment, if appropriate. Therefore, the court held that Petitioner's submission of a notarized statement was insufficient to satisfy his eligibility threshold and stated that the petitioner must provide additional documentation demonstrating that he had met the threshold.<sup>66</sup> This case is simply inapposite to the current dispute.

22. Unlike the statute at issue in *Committee to Elect LaRouche*, section 276 does not contain any certification requirements. In contrast, in this instance, we are only required to interpret the meaning of Commission orders stating that LECs "must be able to certify" compliance and that IXCs may request such a certification. Absent explicit requirements in the Act or these orders, it is firmly within our discretion to interpret these orders using the common meaning of the term "to certify" as previously described.<sup>67</sup> Nothing in section 276 requires a LEC to certify to any entity that it has satisfied the prerequisites to receiving per-call compensation. Nothing in section 276 requires the state or the Commission to certify to the IXC that such prerequisites have been met. Finally, neither section 276 nor the Commission's orders requires the Commission or any other entity to review a LEC's certification to determine if a LEC is eligible to receive per-call compensation, and if so, how much compensation that LEC should receive. We therefore conclude that neither section 276 nor the Commission's rules and orders authorize the IXC to review a LEC's submission and determine, based on its analysis of whether the prerequisites have been met, whether a LEC

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<sup>65</sup> 613 F.2d 834 (D.C. Cir. 1978).

<sup>66</sup> See *id.* at 842.

<sup>67</sup> See *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965); see also *National Association of Regulatory Utility Commissioners v. FCC*, 746 F.2d 1492, 1502 (D.C. Cir. 1984) (stating that the Commission's interpretation of its own policies and regulations is entitled to "great deference" and that "the administrative interpretation is of controlling weight unless it is plainly erroneous or inconsistent with the regulation.") (citations omitted).



should receive per-call compensation.<sup>68</sup>

23. We conclude that Bell Atlantic's certification letters satisfy the Commission's requirement that a LEC "must be able to certify" as set forth in the *Order on Reconsideration*. In the instant case, Bell Atlantic provided signed letters from its representatives attesting that it satisfied the Commission's prerequisites to certification. For example, in its initial letter seeking compensation, dated June 27, 1997, NYNEX stated that "[t]he NYNEX telephone companies hereby certify that they have met the requirements established by the [Commission] to receive compensation from carriers."<sup>69</sup> NYNEX listed each of its companies and stated that the letter was a certification that each company satisfied the prerequisites. NYNEX further stated that "[a]ccordingly, NYNEX is in full compliance with the applicable requirements as set forth in the *Payphone Orders*."<sup>70</sup> Similarly, Bell Atlantic, on behalf of its companies, stated "[e]nclosed are Certifications confirming that each of the Bell Atlantic local

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<sup>68</sup> To the contrary, the Bureau specifically has stated that "LECs that have certified to the IXC that they comply with the requirements of the *Payphone Orders* must receive per-call compensation." *Bureau Coding Digit Waiver Order*, 13 FCC Rcd at 5001-02, para. 4.

<sup>69</sup> Complaint (Frontier) at Exhibit A; Complaint (MCI) at Exhibit B.

<sup>70</sup> Complaint (Frontier) at Exhibit A; Complaint (MCI) at Exhibit B. Specifically, the letters state that "[t]he NYNEX telephone companies hereby certify that they have met the requirements established by the [Commission] to receive compensation from carriers . . . [as] were initially set forth by the Commission in paragraphs 131 and 132 of the [Order on Reconsideration] in the *Payphone Reclassification Proceeding*, and [ . . . ] clarified and modified by subsequent Orders." NYNEX certified the following:

- 1.) NYNEX has an effective cost accounting manual (CAM) filing.
- 2.) NYNEX has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multi-line subscriber line charge (SCL) revenue.
- 3.) NYNEX has effective intrastate tariff filings reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies.
- 4.) NYNEX has deregulated and reclassified the value of payphone customer premises equipment (CPE) and related costs as required in the *Report and Order*.
- 5.) NYNEX has in effect intrastate tariffs for basic payphone service (for "dumb" and "smart" payphones).
- 6.) NYNEX has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines.
- 7.) NYNEX has an approved Comparably Efficient Interconnection (CEI) plan for basic payphone services and unbundled functionalities prior to receiving compensation.

NYNEX also provided the following: (1) a statement that NYNEX had informed the states that it had complied with the "new services test" set forth by the Bureau; and (2) a statement that it had filed rate changes required in the existing intrastate tariffs so as to satisfy the "new services test" on any unbundled functionalities that were not then in compliance." *Id.*

exchange companies has met all requirements established by the Federal Communications Commission for eligibility to receive payphone compensation . . . .<sup>71</sup> Bell Atlantic provided a separate certification for each company.<sup>72</sup>

24. As detailed above, to constitute a certification the LEC must assert that it has complied with the compensation eligibility prerequisites. The *Bureau Intrastate Tariffing Waiver Order* stated that an IXC could request "a certification for each prerequisite." Accordingly, we find that a satisfactory certification would attest that the LEC had satisfied each compensation eligibility prerequisite.<sup>73</sup> We find that Bell Atlantic's letters of certification clearly meet this standard.

25. In addition to stating that it had complied with each prerequisite, Bell Atlantic's letters listed each requirement separately and stated how it satisfied each prerequisite.<sup>74</sup> For example, Bell Atlantic provided compliance matrices indicating the tariff approval date reflecting intrastate subsidy removal and the approval date of a CEI plan where appropriate. We found above that certification requires an attestation that the LEC has complied with each compensation eligibility prerequisite. Thus, Bell Atlantic not only satisfied its obligation to attest to its compliance, but also provided specific information to the IXC concerning compliance. In light of such thorough filings, Defendants had no basis for refusing to pay compensation.

### C. Eligibility Disputes

26. Frontier contends that a dispute as to a carrier's eligibility to receive payphone compensation after certification negates an IXC's obligation to pay payphone compensation.<sup>75</sup> In support of its position, Frontier compares its present dispute regarding payphone compensation eligibility to how disputed ANIs are resolved. According to Frontier, a carrier is not required to pay compensation on disputed ANIs until "a LEC makes a positive identification of an installed payphone."<sup>76</sup>

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<sup>71</sup> Complaint (Frontier) at Exhibit B.

<sup>72</sup> See *Id.*

<sup>73</sup> See *Bureau Intrastate Tariffing Waiver Order*, 12 FCC Rcd at 21,380, para. 22.

<sup>74</sup> Letter to Michael Nighan, Manager-Regulatory, Allnet/Frontier from Paul V. Francischetti, Vice President-Legislative Planning & Re-Engineering, Bell Atlantic (June 30, 1997).

<sup>75</sup> See Frontier Brief at 8.

<sup>76</sup> *Id.* (citing *Report and Order*, 11 FCC Rcd at 20,597-98, para. 113).

27. We reject Frontier's contention. The Commission established specific procedures to resolve disputed ANIs.<sup>77</sup> In contrast, although the *Bureau Intrastate Tariffing Waiver Order* permits IXC payors to request a certification from the LECs,<sup>78</sup> we have specifically stated that IXCs *must* pay compensation upon receipt of the LEC's certification.<sup>79</sup> There is no exception to this absolute obligation to pay upon receipt of certification. As noted above, the *Payphone Orders* delegated to the Bureau the authority to determine whether a LEC had complied with the prerequisites to payphone compensation.<sup>80</sup> IXCs questioning the veracity of a LEC's certification are obligated to challenge the LEC's compliance may initiate a proceeding at the Commission.

28. In the instant matter, neither Frontier nor MCI have availed themselves of this remedy, but instead have undertaken the remedy of self-help by refusing to pay compensation mandated by our rules. As we have stated in other contexts, such self-help remedies are strongly disfavored by the Commission.<sup>81</sup> We emphasize that a LEC's certification letter does not substitute for the LEC's obligation to comply with the requirements as set forth in the *Payphone Orders*. The Commission consistently has stated that LECs must satisfy the requirements set forth in the *Payphone Orders*, subject to waivers subsequently granted, to be eligible to receive compensation. Determination of the LEC's compliance, however, is a function solely within the Commission's and state's jurisdiction. As stated above, the Commission specifically delegated to the Common Carrier Bureau the authority to determine whether a LEC has complied with the compensation eligibility prerequisites.<sup>82</sup>

#### D. Damages.

29. We conclude above that Bell Atlantic's letters constitute an adequate certification, such that these letters triggered Defendants' obligation to pay payphone compensation. The Commission bifurcated this proceeding into liability and damages phases. Thus, in accordance with section 1.722(b) of the Commission's rules, the complainant may

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<sup>77</sup> See 47 C.F.R. § 64.1310(e)(1), (2); see also *Report and Order*, 11 FCC Rcd at 20,598, paras. 113-14.

<sup>78</sup> See *Bureau Intrastate Tariffing Waiver Order*, 12 FCC Rcd at 21,380, para. 22.

<sup>79</sup> See *id.*

<sup>80</sup> See *supra* para. 19; see also *Order on Reconsideration*, 11 FCC Rcd at 21,294, para. 132.

<sup>81</sup> See *MCI Telecommunications Corp., Memorandum Opinion and Order*, 62 FCC 2d 703, 705-06 (1976) (stating that a customer may not withhold payment of properly billed tariffed charges for voluntarily ordered services).

<sup>82</sup> See *supra* para. 19.

file a supplemental complaint for damages within sixty days of the release of this order.<sup>83</sup>

#### IV. BELL ATLANTIC'S MOTION TO STRIKE

30. On September 17, 1998, Bell Atlantic filed a motion to strike Frontier's opening brief. Bell Atlantic argues that the Commission Should strike Frontier's brief because the brief ignored the issues that the Commission directed the parties to brief and instead addressed questions that the Commission rejected as issues for briefing.<sup>84</sup> On September 24, 1998, Frontier filed a reply to Bell Atlantic's motion to strike and argued that it directly "addressed the issues identified by Commission staff for briefing."<sup>85</sup> We deny Bell Atlantic's motion to strike. Frontier's brief did address issues set forth by the Commission. To the extent Frontier addressed matters beyond the scope of the issues set forth for this briefing, we did not consider those arguments.

#### V. CONCLUSION AND ORDERING CLAUSES

31. In conclusion, we find that Bell Atlantic's letters to Defendants satisfy the Commission's certification requirement. We also find that Defendant's arguments that Bell Atlantic was required to demonstrate compliance to their satisfaction are without merit for the reasons stated above. Under Defendants' theory, the IXC would be the ultimate judge of whether the LEC payphone service provider had complied with the Commission's rules and orders. This outcome is unacceptable. First, such a construct would allow the IXC to delay paying compensation indefinitely. Second, the statute requires that the Commission "ensure all payphone service providers are fairly compensated for each . . . call" made from a payphone.<sup>86</sup> The Commission has not—and cannot—delegate this statutory requirement to IXCs. Therefore, we conclude that Bell Atlantic is entitled to receive per-call compensation from Frontier and MCI.

32. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 208, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and 276, that the instant complaint filed on July 15, 1998, by Bell Atlantic-Delaware, Inc., Bell Atlantic-Maryland, Inc., Bell Atlantic-New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., Bell Atlantic-Virginia, Inc. Bell Atlantic-Washington, D.C., Inc., Bell Atlantic-West Virginia, Inc.,

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<sup>83</sup> 47 C.F.R. § 1.722(b).

<sup>84</sup> Motion to Strike at 1.

<sup>85</sup> Reply to Motion to Strike at 1.

<sup>86</sup> 47 U.S.C. § 276.

New York Telephone Company and New England Telephone and Telegraph Company against Frontier Communications Services Inc., Frontier Communications International Inc., Frontier Communications of the West Inc., Frontier Communications-North Central Region Inc., Frontier Communications of New England Inc., and Frontier Communications of the Mid Atlantic Inc. IS GRANTED TO THE EXTENT INDICATED HEREIN.

33. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 4(j), 208, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and 276, that the instant complaint filed on July 15, 1998, by Bell Atlantic-Delaware, Inc., Bell Atlantic-Maryland, Inc., Bell Atlantic-New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., Bell Atlantic-Virginia, Inc. Bell Atlantic-Washington, D.C., Inc., Bell Atlantic-West Virginia, Inc., New York Telephone Company and New England Telephone and Telegraph Company against MCI Communications Corporation IS GRANTED TO THE EXTENT INDICATED HEREIN.

34. IT IS FURTHER ORDERED that Bell Atlantic MAY FILE a supplemental complaint for damages within sixty (60) days pursuant to Section 1.722(b)(2) of the Commission's rules, 47 C.F.R. § 1.722(b).

35. IT IS FURTHER ORDERED that Bell Atlantic's motion to strike is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

  
Lawrence E. Strickling  
Chief, Common Carrier Bureau